

## REMARKS/ARGUMENTS

Claims 21 and 22 have been amended. Claims 2-19, 21-23 and 25-38 are presently pending, with claims 16, 17, 18, 19, 21, 22 and 34-37 being the independent claims. Reconsideration is respectfully requested.

### *Specification*

The specification was objected to because the title of the invention is not descriptive.

While not conceding the correctness of the objection and in an effort to expedite prosecution of the present application, the title of the application has been amended to "System and Method for Rate Assignment." Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

### *Claim Rejections – 35 USC § 102*

Claims 17, 19, 21, 35 and 37 were rejected under 35 USC § 102(e) as being anticipated by U.S. Pat. No. 7,630,321 to Jain et al. ('321 patent). Applicants respectfully request reconsideration and withdrawal of the rejection for at least the reasons given below.

Applicants submit that the '321 patent and the present application have the same inventive entity. Because the '321 patent has the same inventive entity as the present application, the '321 patent is not a patent granted on an application by another, and therefore does not qualify as prior art under 35 U.S.C. §102(e). According to MPEP § 706.02(a)(II)(B), "[i]n order to apply a reference under 35 U.S.C. 102(e), the inventive entity of the application must be different than that of the reference" (emphasis added).

For the Examiner's convenience, Applicants have attached the Declarations for both the '321 patent and the present application showing that the '321 patent and the present application have the same inventive entity.

The Declaration for the '321 patent, which was granted from Pat. App. No. 10/640,777, was signed by inventors Avinash Jain on February 14, 2005; Jelena Damjanovic on February 14, 2005; and Tao Chen on February 22, 2005. The Declaration for the present application was signed by inventors Avinash Jain on August 11, 2004; Jelena Damjanovic on August 12, 2004; and Tao Chen on August 11, 2004. Thus, the '321 patent and the present application list

identical inventors, and therefore have the same inventive entity, disqualifying the '321 patent from being used as prior art under 35 U.S.C. § 102(c).

For at least the reasons given above, Applicants submit that claims 17, 19, 21, 35 and 37 are in condition for allowance, and respectfully request that the § 102 rejection be withdrawn.

***Claim Rejections – 35 USC § 101***

Claims 21 and 22 were rejected under 35 USC § 101 for being directed to non-statutory subject matter.

Without conceding the correctness of the § 101 rejection and in an effort to expedite prosecution of the application, Applicants have amended claims 21 and 22 to recite a “non-transitory computer-readable medium.” Accordingly, Applicants respectfully request that the § 101 rejection be withdrawn.

***Allowable Subject Matter***

Applicants appreciate the allowance of claims 16, 18, 23, 25-34 and 36.

Applicants appreciate the indication that claims 2-15 and 38 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, since independent claim 17, from which claims 2-15 and 38 depend, is allowable in its own right for at least the reasons given above, Applicants submit that claims 2-15 and 38 do not need to be rewritten into independent form.

### CONCLUSION


In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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By: \_\_\_\_\_

  
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